

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-40863
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 8, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALBERTO ESPINOSA,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 2:08-CR-318-9

Before DAVIS, JONES, and HAYNES, Circuit Judges.

PER CURIAM:*

Alberto Espinosa has moved for leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a sentence reduction based on Amendment 782 to the Sentencing Guidelines. By seeking leave to proceed IFP, Espinosa has challenged the district court's certification that his appeal is not taken in good faith because it is frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 15-40863

Amendment 782 reduced Espinosa's applicable guideline range to 135 to 168 months of imprisonment, which is higher than the 120-month sentence imposed. Because his sentence was 48 months below his original guideline range, his § 3582(c) motion sought a comparable reduction below his amended range and below the 120-month statutory minimum. However, the government's motion for a downward departure from the guidelines did not request or authorize a sentence below the statutory minimum, so the district court did not have authority to grant a sentence reduction below the statutory minimum. *See Melendez v. United States*, 518 U.S. 120, 125-26 (1996); U.S.S.G. § 1B1.10(c).

Espinosa's appeal does not present a nonfrivolous issue and has not been brought in good faith. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). The motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.